

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

COPY

ROYAL INDEMNITY COMPANY,)
)
Plaintiff,)
) C.A. No. 05-165-JJF
v.)
)
PEPPER HAMILTON LLP, W.)
RODERICK GAGNE', FREED)
MAXICK & BATTAGLIA CPAs)
PC, McGLADREY & PULLEN,)
LLP, MICHAEL AQUINO and)
FREED MAXICK SACHS &)
MURPHY,)
)
Defendant.)

Wednesday, February 7, 2007
1:03 p.m.
Courtroom 4B

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE JOSEPH J. FARNAN, JR.
United States District Court Judge

APPEARANCES:

ASHBY & GEDDES
BY: PHILIP TRAINER, JR., ESQ.
BY: TIFFANY GEYER LYDON, ESQ.

-and-

SONNENSCHN, NATH & ROSENTHAL, LLP
BY: JOHN I. GROSSBART, ESQ.
BY: MICHAEL H. BARR, ESQ.

Counsel for Plaintiff

1 APPEARANCES CONTINUED:

2 DUANE MORRIS, LLP
3 BY: MICHAEL LASTOWSKI, ESQ.
4 -and-

5 WILLIAMS & CONNOLLY, LLP
6 BY: THOMAS H. L. SELBY, ESQ.

7 Counsel for Defendant
8 McGladrey & Pullen, LLP

9 ARNOLD & PORTER, LLP
10 BY: VERONICA E. RENDON, ESQ.
11 BY: JASON M. BUTLER, ESQ.

12 Counsel for Defendants
13 McGladrey & Pullen, LLP
14 Michael Aquino

15 THE BAYARD FIRM
16 BY: CHARLENE D. DAVIS, ESQ.

17 -and-

18 McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP
19 BY: MICHAEL S. WATERS, ESQ.
20 BY: LOIS H. GOODMAN, ESQ.

21 Counsel for Chapter 7 Trustee

22 PRICKETT, JONES & ELLIOTT
23 BY: LAINA M. HERBERT, ESQ.

24 -and-

VEDDER, PRICE, KAUFMAN & KAMMHOLZ, P.C.
BY: JONATHAN A. WEXLER, ESQ.

Counsel for Defendants,
Freed, Maxick, Sachs & Murphy &
Freed, Maxick & Battaglia

1 APPEARANCES CONTINUED:

2 SCHNADER LAW

3 BY: ELIZABETH K. AINSLIE, ESQ.

4 BY: STEPHEN J. SHAPIRO, ESQ.

5 Counsel for Pepper Hamilton, LLP
6 and Roderick Gagne

7 ECKERT SEAMENS

8 BY: NEIL G. EPSTEIN, ESQ.

9 Counsel for Robert Best, Pamela
10 Gagne, Roderick Gagne and Family
11 Trusts

12 PROSKAUER ROSE, LLP

13 BY: ANDRE G. CASTAYBERT, ESQ.

14 BY: STEVEN OBUS, ESQ.

15 Counsel for MBIA and Wells Fargo
16 as Trustees

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1 THE CLERK: All rise.

2 THE COURT: All right. Be seated,
3 please.

4 Good afternoon.

5 (Everyone said, Good afternoon, Your
6 Honor.)

7 THE COURT: All right. You want to
8 announce your appearances?

9 MR. GROSSBART: John Grossbart on
10 behalf of Royal Indemnity Company, plaintiff.

11 MR. BARR: Michael Barr,
12 Sonnenschein, Nath & Rosenthal on behalf of
13 Royal.

14 MR. TRAINER: Lee Trainer, Ashby &
15 Geddes on behalf of Royal.

16 MS. GOODMAN: Good afternoon, Your
17 Honor. Lois Goodman from McElroy, Deutsch,
18 Mulvaney & Carpenter on behalf of Charles A.
19 Stanziale, Trustee.

20 MR. WATERS: Michael Waters on
21 behalf of the Trustee, Your Honor. Good
22 afternoon.

23 MS. DAVIS: Charlene Davis for The
24 Bayard Firm on behalf of the Chapter 7 Trustee.

1 MS. LYDON: Tiffany Geyer Lydon from
2 Ashby & Geddes on behalf of Royal.

3 MS. RENDON: Veronica Rendon, Arnold
4 & Porter on behalf of McGladrey & Pullen, LLP and
5 Mr. Michael Aquino.

6 MR. SELBY: Thomas Selby from
7 Williams & Connolly on behalf of McGladrey &
8 Pullen.

9 MS. AINSLIE: Elizabeth Ainslie
10 representing Pepper Hamilton and Rod Gagne as the
11 partner.

12 MR. SHAPIRO: Steve Shapiro,
13 Schnader Harrison on behalf of Pepper and Gagne.

14 MR. EPSTEIN: Neil Epstein on behalf
15 of Robert Best, Pamela Gagne, and Mr. Roderick
16 Gagne, and Family Trusts.

17 MR. LASTOWSKI: Michael Lastowski of
18 Duane Morris here today on behalf of McGladrey &
19 Pullen.

20 MR. PELLETIER: David Pelletier from
21 Schnader Harrison on behalf of Pepper and Rod
22 Gagne as a partner at Pepper.

23 MR. WEXLER: Jonathan Wexler of
24 Vedder Price on behalf of Freed, Maxick, Sachs &

1 Murphy and Freed, Maxick & Battaglia.

2 MR. BUTLER: Jason Butler on behalf
3 of McGladrey & Pullen and Michael Aquino.

4 MR. CASTAYBERT: Andre Castaybert on
5 behalf of MBIA and Wells Fargo as Trustees, and
6 I'm expecting my colleague, Steve Obus, to be
7 here..

8 THE COURT: All right. We're here
9 for a discovery conference, and what I understand
10 is that Docket Item 133, a motion to compel
11 production of communications between the Trustee
12 and Royal and documents related, excuse me, to
13 compensation received by the Trustee filed by
14 Pepper Hamilton and Gagne remains open.

15 Is that correct?

16 MS. AINSLIE: That's correct, Your
17 Honor.

18 THE COURT: Pardon me?

19 MS. AINSLIE: That is correct.

20 THE COURT: You haven't been able to
21 resolve it. That motion is going to be granted
22 in all respects except with regard to the
23 personnel files of accountants. My understanding
24 is that what's sought by that motion and are with

1 that pertain to agreements. They are the
2 agreements themselves, not communications.

3 This case being a case with credible
4 allegations of fraud requires, I believe and find
5 more depth in the discovery than might otherwise
6 be granted in a contract or simple negligence
7 case. So weighing the allegations of fraud
8 against the discovery effort, I've determined
9 that the other four categories of documents must
10 be produced.

11 MR. GROSSBART: Your Honor, I think,
12 if I may, John Grossbart. I wouldn't say
13 that's -- you are, I think, referring to Royal's
14 motion against McGladrey as opposed to --

15 THE COURT: I'm sorry. You're
16 right.

17 What did I say?

18 MR. GROSSBART: The Pepper motion.

19 THE COURT: I apologize.

20 MR. GROSSBART: No, that's all
21 right.

22 THE COURT: You're right. Now, the
23 motion that I just ruled on is Docket Item 299
24 filed by Royal Indemnity.

1 Docket Item 133, the motion that
2 compels production of communications between the
3 Trustee and Royal and documents relating to
4 compensation received by the Trustee filed by
5 Pepper, is that the right docket item number?

6 I might have written these down
7 wrong.

8 MR. GROSSBART: I don't know.
9 That's certainly an outstanding motion.

10 MR. WATERS: That's the other
11 motion.

12 THE COURT: I better go check the
13 docket real quick just to be sure. I tried to
14 take the docket items off the original documents,
15 so let me just be sure.

16 MR. WATERS: Your Honor, if I may,
17 the --

18 THE COURT: Yes.

19 MR. WATERS: The docket number for
20 Stanziale versus Pepper Hampton is Civil Action
21 Number 04-15 --

22 THE COURT: Yeah, that's not
23 helpful. I have 04-1551. I'm looking for the
24 docket items with --

1 MR. WATERS: Oh, the docket items.

2 THE COURT: The specific docket
3 items in the briefing. They are just on the
4 corner usually, and they're not used by you all
5 when you talk about the motions.

6 So I want to be sure. I got that
7 first one wrong, but it is DI-299.

8 Now, 133 --

9 (Following a discussion held off the
10 record:)

11 THE COURT: Okay. All right.

12 Docket Item 133 in 04-1551, the
13 motion to compel is granted.

14 And Docket Item 156 a motion for
15 protective order and to compel discovery. As I
16 understand it, in the first part, there's a
17 request for in camera review, which I'll grant.

18 Are you understanding?

19 MS. AINSLIE: Yes.

20 THE COURT: You both said that you
21 would --

22 MS. AINSLIE: We have the documents
23 here, Your Honor. We can leave them here with
24 you.

1 THE COURT: You'll submit them, and
2 I'll make a ruling on those documents --

3 MS. AINSLIE: That will be fine.

4 THE COURT: -- on the context of
5 that motion.

6 The second part of that motion is a
7 request for Gagne's compensation records.

8 MS. AINSLIE: We have already
9 provided those, Your Honor.

10 MR. WATERS: That's been resolved,
11 Your Honor.

12 THE COURT: So all I need to have in
13 that motion, then, is the in camera documents.

14 MR. GROSSBART: Your Honor, if I
15 could ask a point of clarification on that
16 particular motion?

17 THE COURT: Sure.

18 MR. GROSSBART: Pepper's motion had
19 really two separate and independent parts. One
20 had to do with Trustee compensation, one had to
21 do with what we contend were joint.

22 THE COURT: This is 133?

23 MR. GROSSBART: Well, they were in
24 the same documents to get Trustee compensation.

1 and communications between Royal and the Trustee,
2 which we've asserted are protected by joint
3 privilege.

4 Are you granting both aspects of
5 that motion or have you not spoken yet to the
6 communications between the Trustee and Royal?

7 That motion also deals with --

8 THE COURT: There are two aspects to
9 that, pre-settlement and post-settlement. And
10 I'm granting it as to what I thought the request
11 boiled down to, which were the pre-settlement
12 discussions.

13 MR. GROSSBART: Got you.

14 THE COURT: If I misunderstood, now
15 is the time to tell me.

16 MR. GROSSBART: No. I don't think
17 you misunderstood it. I -- I appreciate that
18 distinction.

19 THE COURT: Okay.

20 MR. GROSSBART: And just because I'm
21 switching gears here with these numbers on the
22 motion that Royal brought against McGladrey, the
23 motion to compel, did I understand the Court to
24 say it's granted in all respects except the

1 personnel files or did I --

2 THE COURT: There were five specific
3 categories and somewhere in an opening paragraph
4 of the brief, you set them out pretty clear, the
5 five categories.

6 It's granted in all respects except
7 to the --

8 MR. GROSSBART: Correct.

9 THE COURT: -- personnel files, as I
10 understood it, of the accountant employees.

11 MR. GROSSBART: One of the things we
12 asked with respect to that item in particular is
13 if we were going to be denied discovery of those
14 personnel files, that there be in limine
15 protection against use of the personnel files
16 that we and perhaps others have already produced
17 in the case.

18 THE COURT: Well, I understand that
19 you gave over some files.

20 MR. GROSSBART: Yes.

21 THE COURT: But all of you are going
22 to be, I assume, if this case goes to trial, in
23 an in limine practice. And what I tried to say
24 at the beginning was that I'm granting the

1 discovery because of the fraud assertions, but
2 that doesn't mean that this is going to be
3 evidence that gets into a trial.

4 MR. GROSSBART: No, I understand.

5 THE COURT: Because if you get that
6 far, because it will be motions to limit
7 admission. Because their big argument is that
8 it's really not probative on any issue. And, of
9 course, you argument to all that is you already
10 gave them over.

11 MR. GROSSBART: My bad.

12 THE COURT: I don't know what to
13 tell you.

14 So down the road, I understand you
15 may, but for purposes now, present purposes, I'm
16 just ruling on what's disputed. But I would
17 think, to give you my present thinking, manuals
18 probably get in. Irrelevant personnel
19 evaluations, generally, not specific to the issue
20 don't.

21 But I don't know. I'll have to wait
22 and see.

23 MR. BARR: Your Honor.

24 THE COURT: We have got to have a

1 little more discovery before we get that.

2 MR. BARR: Michael Barr. I
3 apologize two people addressing the same issue.

4 Is the Court's denial of our access
5 to their personnel records also pertaining to the
6 specific material where they may have you review
7 that says your performance with respect to the
8 Student Finance?

9 THE COURT: Yes.

10 MR. BARR: So across the board?

11 THE COURT: For present purposes,
12 you're out.

13 MR. BARR: Thank you, Your Honor.

14 MS. RENDON: Your Honor, on the same
15 motion, if I may just seek some additional
16 clarification.

17 And I thought, and maybe I
18 misunderstood the Court, that with respect to the
19 request by Royal for joint defense agreements or
20 any kind of cooperation agreements, what Your
21 Honor has ordered is only that agreements be
22 produced, but not communications subject to that
23 agreement.

24 THE COURT: Yeah. I couldn't tell

1 in your papers whether you whispered to each
2 other or you've written things down. I'm not
3 sure, whatever the agreements are, whether
4 they're whispered, oral, written down. You've
5 got to give them the agreements.

6 You don't have to give any
7 communications that you then transacted subject
8 to those agreements. That, you know, in my view,
9 is not part of my order.

10 MS. RENDON: And I just wanted to
11 clarify that I had another request for
12 clarification, also, and it relates to the audit
13 manuals that I understand Your Honor is ordering
14 to be produced.

15 And the question that I have on that
16 is: The request for production was for years
17 audit manuals that existed for 1997 through 2002,
18 but the work that is the subject of the lawsuit
19 all occurred in the time period February 2000
20 through April 2001.

21 And what I would request is that
22 the -- and I'm not sure if Your Honor took that
23 into consideration or not. I'm sure you will let
24 me know. But I guess what I'm asking is: Can we

1 limit the production of the audit manuals to the
2 time period that the work is at issue?

3 THE COURT: No. I didn't think the
4 period requested was burdensome, because it's an
5 audit manual.

6 And I could see where they may want
7 to make some -- I don't want to be an advocate
8 here, but I could see where they may want to use
9 prior manuals versus manuals specifically
10 relevant to the time frame. It is discovery.

11 Now, again, whether I would let them
12 use a manual from '97 against the allegations of
13 the case as proof, I don't know yet. But I think
14 for discovery purposes, I can understand the
15 reason why they would want '97 through.

16 MS. RENDON: Thank you, Your Honor.

17 THE COURT: So you have to give them
18 all. You were standing up in the middle of her
19 conversation.

20 MR. BARR: Your Honor, you
21 responded --

22 THE COURT: I mean, he was standing
23 up.

24 MR. BARR: I'm sitting down.

1 MR. GROSSBART: I was standing up,
2 but it got clarified, and I jumped the gun a bit.

3 THE COURT: Okay. So do you want
4 to --

5 MR. GROSSBART: We're great.

6 THE COURT: You want to jump up?

7 MR. BARR: I'm not budging.

8 MR. WATERS: Just to be certain,
9 your ruling on Pepper's document request with
10 respect to Mr. Stanziale's compensation from his
11 law firm, you denied the motion for a protective
12 order.

13 THE COURT: Yes.

14 MR. WATERS: And you're granting
15 that?

16 THE COURT: Yes.

17 MR. WATERS: I am clear. I just
18 wanted to make sure.

19 THE COURT: Yes. There is a
20 protective order in the case, and I think if
21 they -- what was it they talk about, a \$5 million
22 payment?

23 And then what is going on between
24 the Trustee and the law firm, you know, if they

1 want to know that, that's fine. But, again, I
2 don't know if it's evidence in the case on an
3 element ultimately as, you know, proving.

4 But I'm going to let them see it. I
5 don't think it's all that critical --

6 MR. WATERS: Okay. I understand.

7 THE COURT: -- as a discovery
8 matter.

9 They're just curious. They are
10 trying to see if they're being taken care of on
11 their side. It's not a big deal.

12 I'm not someone that's shocked by
13 numbers. I figure all the aggravation you put up
14 with, you probably ought to be getting double
15 what you are any way.

16 So, all right. Does that kind of
17 settle what was out there?

18 There's one more thing in this
19 letter request. I'm sorry.

20 Is that what you wanted to talk
21 about?

22 MR. SELBY: Yes.

23 THE COURT: I sort of had in mind
24 what I was going to do, and then I got this

1 letter, my case manager gave it to me about a
2 half hour ago, telling me what the status is.
3 Because maybe I don't have to get into this.

4 MR. SELBY: Your Honor, we filed the
5 application. As you know, we were before you
6 arguing for Royal in the United States to produce
7 the documents. Your Honor denied that motion.

8 We, at the time, informed you we'd
9 be filing the application under the Hague
10 Convention, which we did in January.

11 We, too, received today this letter
12 objecting, not to the substance of the request,
13 the documents requested, but to some of the
14 language in the application itself. And we've
15 had a brief discussion outside, but that's really
16 where we are today.

17 We think time is of the essence.
18 We'd like to get the application approved,
19 because as you know, these things take time
20 getting overseas and getting the Court's
21 attention overseas.

22 We've worked with counsel overseas
23 to craft the request the way it was crafted. And
24 so we'd like to get approval as quickly as

1 possible.

2 MR. BARR: Your Honor, simply stated
3 where our objection was, Mr. Selby is correct.
4 We're not objecting to them making letter
5 requests or the Court issuing an order from this
6 Court with respect to that in order to start the
7 processes for the Hague Convention.

8 The portion of what they propose
9 that we objected to, in effect, put this Court in
10 the position of finding essentially relevance
11 with respect to certain materials, making certain
12 specific factual findings as to the relevance of
13 those materials as to the existence of certain
14 facts.

15 And the only changes that we made in
16 our proposed change was effectively just to
17 eliminate that portion of the findings and to say
18 this is their contention and it's effective for
19 the Court's indulgence to determine how to
20 proceed under the Hague Convention.

21 It's different what they presented
22 to the Court and what we presented to the Court
23 and most of those changes, Your Honor, are on
24 Page 6, one paragraph there.

1 THE COURT: Do you need those to
2 make your case?

3 MR. SELBY: Our concern, Your Honor,
4 is that we need to make a showing in the U.K. for
5 these documents, and that paragraph is addressed
6 to the involvement of the U.K. parent in the
7 transaction and in the events related to today.

8 It is our allegations. We're not
9 submitting that Royal is bound by any finding of
10 this Court related to the application, but we do
11 think it's important to tell the Court in the
12 United Kingdom what the involvement of the United
13 Kingdom company was in order to make the showing
14 for them to approve the application.

15 MR. BARR: Your Honor, we think that
16 they do make that showing. And again, it is
17 certain they can file papers further to this in
18 London.

19 But they do make those kind of
20 statements on Pages 2, 3 and 4 of their letter
21 request. They lay these things out chapter and
22 verse. And there it's cast in terms of what
23 their allegations are.

24 When you turn to the paragraph on

1 Page 6, it specifically is written in a fashion
2 that no longer talks about these being
3 McGladrey's allegations or McGladrey's
4 contentions, but rather that these are actual
5 specific findings of this Court. And Your Honor,
6 effectively, you are putting then your judicial
7 interpretation on those findings. And
8 respectfully that is not what occurred here.

9 And, again, we're focusing -- there
10 are a few other words we changed earlier, again,
11 to talk about the notion of allegations. What we
12 could do, Your Honor, we could, by this afternoon
13 or tomorrow morning at the latest, provide just a
14 red line so the Court can see the comparison
15 between the two.

16 But, again, if you're looking at the
17 way the language is on the top of Page 6 where it
18 says, you know, the documents in RSA's
19 possession, i.e. assuming they're in their
20 possession, will be used to prove their defenses
21 at the trial of this case.

22 And then proceeding, starting with
23 the third sentence, it relates very specifically,
24 effectively findings as to what the role was of

1 the U.K. parents here, and no factual findings
2 that may ultimately be found in this trial or
3 not.

4 But they certainly are not something
5 that this Court has already determined. The
6 change that we made, which in our proposal, Your
7 Honor, and I could just hand up a copy if need be
8 here. It's, again, on Page 4 after Number 8.

9 May I approach?

10 THE COURT: I think I have it.

11 MR. BARR: Your Honor, if you would
12 look, then, on Page 4 of our proposal. And the
13 paragraph under -- it's numbered Paragraph 8. I
14 think that language would simply change it to be
15 what they contend happened here, and the fact
16 that they may use -- potentially use these at
17 trial.

18 Again, then it doesn't put this
19 Court in the position of saying to the Court in
20 London, This is what occurred.

21 MR. SELBY: Your Honor, that
22 language is particularly problematic, the
23 language that's just been highlighted to you,
24 because of the requirements of the U.K. Court

1 that this be not for discovery purposes, but for
2 the use at trial. And the qualifiers in that
3 sentence, as written by Royal, we believe could
4 lead the U.K. Court to reject this. And this has
5 been pending since January without complaints
6 from Royal until this morning.

7 I find it hard to believe that this
8 is causing as much heartburn as it appears to be
9 when it's been unresponded to all this time.

10 MR. BARR: Your Honor.

11 MR. SELBY: I have no problem -- I
12 have no problem, Your Honor, indicating that --
13 these are on the top of Page 6 of our -- of our
14 original request that these are allegations.
15 We're not trying to imply or suggest that these
16 are findings by this Court.

17 I don't have an objection to that.
18 But the softening of the language appears to have
19 the effect of making this much more contingent
20 than the U.K. Courts may allow and could
21 ultimately lead to further litigation on this
22 matter.

23 MR. BARR: Your Honor, but in the
24 same token, for there to be a presentation to a

1 Court in the U.K., which is obviously not --
2 that's familiar with this action as this Court
3 is, that effectively says these are documents
4 that will be used at trial to prove something is
5 very different from saying these are materials
6 that they need or would like to get possession of
7 in order to present at trial. Those are not the
8 same thing.

9 And, again, for this Court to be
10 saying to a U.K. Court, in effect, fellow jurors,
11 I need these materials in my courtroom for this
12 matter to be adjudicated is a very different
13 thing than what we have ever understood the
14 purpose of the Hague Convention, which is a
15 procedural mechanism for obtaining materials from
16 different jurisdictions.

17 Your Honor, it's our belief this is
18 customary in this type of application. This is
19 customary language. We don't see it as any sort
20 of adoption of the position, and we were glad to
21 try to work out language about the allegations.

22 But we just ask that this either be
23 approved as submitted or that we be given an
24 opportunity to try to work something out over the

1 next 24 hours. But we really would like to
2 proceed with this in order to get these documents
3 and --

4 THE COURT: Well, let's see if we
5 all understand. I mean, in the patent cases we
6 do here, this happens all the time.

7 And it's the same standard, but
8 there's different views on the standard. It's
9 much harder, for instance, in Germany, I'm told,
10 and there's some pharmaceutical patents that come
11 from Sweden and places like that, than it is in
12 the United Kingdom.

13 So, but let me tell you what I think
14 they want you to do: I think you have to make --
15 I have to sign an order that says that I've been
16 presented, and I find that there is evidence in
17 the United Kingdom that is not for discovery,
18 because they don't want you fishing around, but
19 it is for use at trial.

20 Now, the order I read, possible use
21 at trial, I think that probably is okay. Maybe
22 not.

23 But the only scrutiny I think the
24 United Kingdom gives our letters, our orders are

1 that, the difference between discovery and the
2 need for the evidence in the case.

3 I don't make enough to draft that
4 kind of language. You've got to get together and
5 draft that language.

6 Now, it can't be tentative language.
7 And so sometimes we have to accept the
8 representations of officers of the Court that the
9 evidence exists, and they're going to need it.

10 On the other hand, it can't be --
11 first of all, it's not findings able to be used
12 in -- you already said that in the trial. But it
13 can't be wide ranging beyond what you really
14 need.

15 Now, with that guidance can't you
16 come up with something?

17 MR. BARR: Sure we can, Your Honor.
18 Over -- at least we certainly will attempt to do
19 so.

20 MR. SELBY: We'll certainly attempt
21 to do so.

22 THE COURT: If you can't after you
23 in good faith -- I mean, there's actually a
24 little book on this stuff right here in the

1 library in this building. Like they have samples
2 you can go get. Just copy it, and then put your
3 allegations in, what you expect to find, and then
4 I'll sign it.

5 But it ought to be a discrete
6 disagreement if there is a disagreement. And it
7 ought not to be, in my view, about use, intended
8 use. It ought to be about how broad the
9 statement of the information I found is needed.

10 MR. BARR: Thank you, Your Honor.

11 THE COURT: I can parse that, if you
12 can't agree. So you can give me your marked up
13 copy of what you think should be in it, and I'll
14 just make a ruling. And you can have my
15 signature and go.

16 MR. BARR: To be realistic, I would
17 just propose that we have something back to the
18 Court by Friday to inform the Court where we are,
19 it being Wednesday afternoon at this point.

20 MR. SELBY: That's fine.

21 THE COURT: Actually you can
22 probably do this today.

23 MR. SELBY: I agree, Your Honor. I
24 think it is a matter of five words.

1 THE COURT: If this is more than --

2 MR. SELBY: With that direction, I
3 think it's really a matter of changing the tenor
4 of the paragraph on Page 6 to be allegations that
5 McGladrey is making.

6 THE COURT: I don't want to get into
7 it.

8 MR. SELBY: That's fine.

9 THE COURT: That's what I'm trying
10 to avoid. I think you can get this done by this
11 afternoon.

12 MR. SELBY: Okay.

13 THE COURT: And I guess you don't
14 call it typed up anymore. What do you call it?
15 Processed?

16 And I might be able to sign this by
17 five o'clock. You could probably do it in the
18 courthouse and then send somebody with one of
19 those discs.

20 MR. SELBY: We'd be glad to do that,
21 Your Honor.

22 THE COURT: Now, if you can't, then
23 I can look at it tomorrow and get it back to you
24 by tomorrow afternoon.

1 MR. SELBY: Super.

2 THE COURT: So I'll expect to get
3 something to sign by five o'clock or your marked
4 up proposals by 10 o'clock tomorrow morning.

5 MR. SELBY: Thank you, Your Honor.

6 MR. BARR: That's fine, Judge.

7 Thanks.

8 THE COURT: You really should be
9 able to agree on this. This is something -- I
10 mean, I'd be surprised.

11 Or else we'll have to cut off
12 funding. That's the trick.

13 All right. I think I've addressed
14 everything that you had pending.

15 No?

16 MS. AINSLIE: Yes, you have as far
17 as I know. I just wanted to bring two matters to
18 the Court's attention.

19 One of them is I'd like to put on
20 the record the fact that Pepper has, I think,
21 since our -- or at least I wanted to clarify that
22 the only thing that we are withholding and then
23 submitting to the Court by way of in camera
24 inspection are certain communications between Rod

1 Gagne and counsel to Pepper Hamilton.

2 All of the other matters that have
3 been referred to --

4 THE COURT: Say that again. You're
5 withholding between Pepper's counsel?

6 MS. AINSLIE: And Pepper's counsel.

7 THE COURT: Schnader?

8 MS. AINSLIE: No, Pepper. Of
9 counsel. Their other counsel, Mr. Wilcox.

10 So it's those communications. And
11 we have, in fact, waived the -- decided that we
12 are able to produce anything relating to other
13 entities as to which we had previously asserted a
14 privilege.

15 So we have provided those to the
16 Trustee. So the only things that I believe we
17 need to have the Court rule on or look at are
18 these communications. And that's what we've
19 brought.

20 MR. WATERS: As far as I know, they
21 are still withholding documents as to where
22 privilege has not been claimed, but as to which
23 they think a privilege might exist to SLS and SMS
24 and UCM.

1 MS. AINSLIE: We are not.

2 MR. WATERS: If you haven't given it
3 to them, you will turn them all over.

4 MS. AINSLIE: They have been
5 produced, but we'll go back and check. And if
6 any have inadvertently not been produced, they
7 will be.

8 MR. WATERS: Okay.

9 MS. AINSLIE: Your Honor, there's
10 one last thing.

11 THE COURT: I think you have an
12 agreement.

13 MS. AINSLIE: Yes, we do.

14 Your Honor, the one last thing that
15 I'm just raising in case it is of interest to the
16 Court in a way, there is a dispute between the
17 parties, the Trustee and Pepper with respect to a
18 server that has been in existence and exists in
19 the State of New York.

20 We filed a motion to compel in the
21 Southern District of New York and one of the
22 Schnader lawyers went to New York City, argued
23 that it appeared that the judge there was of a
24 mind to transfer it to Your Honor

1 If you would like to hear something
2 about that today, we have Mr. Pelletier. But if
3 you would rather wait and see whether this
4 Southern District judge bites the bullet and
5 decides it, I can understand it.

6 THE COURT: They're supposed to be a
7 lot smarter than us up in the Southern District.
8 Let's see.

9 MS. AINSLIE: That is fine. I just
10 wanted to make the offer.

11 THE COURT: They're the high end of
12 the District Court. We will give them the first
13 shot, and then we'll drop it down here.

14 Here is what I want to tell you: So
15 we're pretty much resolved for what was pending.
16 What I wanted to tell you was there's a
17 procedure, because you all are sort of, you know,
18 at issue in a number of things. As you go on, if
19 you go to the website of my chambers on the Court
20 website, there's a procedure for patent cases for
21 what they call -- what do they call it --
22 non-case dispositive motions. Non-case
23 dispositive motions.

24 So in my world that means not

1 motions to dismiss or summary judgment, but
2 discovery disputes. And there's a motion day
3 each month.

4 It's only for patent cases right
5 now, but I'm going to allow you to utilize that
6 procedure. But read the order very carefully,
7 because there's some strict time frames, and
8 you'll get bounced. And the idea is to help you
9 reduce paper and help us get you quicker answers.

10 So you have to come -- I think --
11 well, you know, you might be -- if you want to go
12 home and write a motion real quickly, I think
13 Friday is the cut-off for March 2nd, because it's
14 a short month in February.

15 I'd prefer you not do that since you
16 were here today, but there are dates out through
17 July once a month. You notice the motion for 10
18 o'clock that day. You have to come.

19 Lately it's been taking like an hour
20 to get everybody out of here. And there's like
21 seven or eight motions on usually.

22 But you're allowed to use that
23 procedure, but be very careful. And then
24 essentially we just enter a disposition

1 electronically on the docket tracking the reasons
2 I give at the hearing, kind of like today.

3 So, but read it carefully about the
4 time frames so you're not cut short and then get
5 bounced to the following month, because that
6 would, you know, not help the purposes of it.

7 And that way we don't have to worry
8 about you having time to get in.

9 MS. AINSLIE: Great. Thank you.

10 THE COURT: Anything else?

11 All right. Thank you very much.

12 We will be in recess.

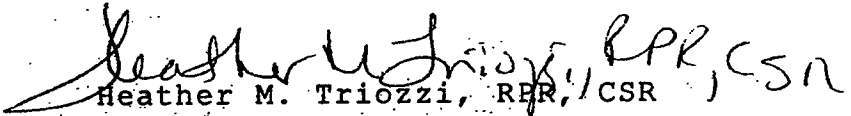
13 (Court was recessed at 1:35 p.m.)
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1 State of Delaware)
2 New Castle County)

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4
5 CERTIFICATE OF REPORTER

6
7 I, Heather M. Triozzi, Registered
8 Professional Reporter, Certified Shorthand
9 Reporter, and Notary Public, do hereby certify
10 that the foregoing record, Pages 1 to 36
11 inclusive, is a true and accurate transcript of
12 my stenographic notes taken on February 7, 2007,
13 in the above-captioned matter.

14
15 IN WITNESS WHEREOF, I have hereunto
16 set my hand and seal this 9th day of February,
17 2007, at Wilmington.

18
19
20
21 
Heather M. Triozzi, RPR, CSR, CSN